

DETAILED ACTION

Continued Examination under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 16, 2010 has been entered.

Because of the applicant's amendment, the original rejections of claims 1, 3, 4, and 12-17 under 35 USC 112 2nd Paragraph, in the office action filed November 18, 2009, are hereby withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

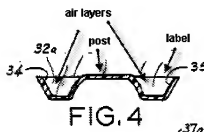
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

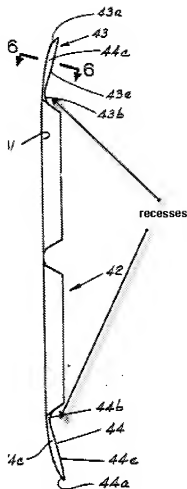
3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1, 4, 12, 14, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaillencourt et al. (5,341,946) [Vaillencourt] in view of Itaba et al. (5,227,233) [Itaba].

Regarding Amended Claim 1 and Claim 17, the patent to Vaillencourt – a hot-filled plastic container with label – discloses a synthetic resin container [Fig. 1] comprising a container body of a first material made of PET [10, Col. 4 Lines 47-49], said container body having a main portion formed with a plurality of sectioned recesses [32a, 43b, 44b], said container further comprising: a label [23] arranged at said main body portion of the container body and surrounding the main body portion [Fig. 1], wherein the label is immovably arranged on the main body portion through an adhesive layer [Col. 5 Lines 15-17].





Vaillencourt does not expressly disclose that the label and bottle are made of the same material; however, the patent to Itaba – a polyethylene container and label – discloses that said label [Itaba, 2] comprises the same material as said container [Itaba, 1, Col. 3 Lines 41-46] for purposes of waste disposal [Itaba, Col. 3 Lines 42-46, and Col. 5 Lines 1-6], in which the label is rigid [Itaba, Col. 3 Lines 32-36], and immovable on the container by an adhesive [Itaba, Col. 5 Lines 7-15, and Col. 6 Lines 32-34]. The label and bottle are both made of polyethylene, and the label can be placed in the mold when making the container. In addition, the printing on the label can be used to

represent a recycling bottle, and the label and bottle can both be recycled together. It would have been obvious at the time of the invention to one of ordinary skill, with market forces driving one of ordinary skill to change the prior art, to modify the label in the Vaillencourt container to be the same material as the container, as suggested by Itaba, to reduce manufacturing material costs, and so that the label can bond to the container through the manufacturing process [Itaba, Col. 3 Lines 37-46].

Regarding Claim 4, Vaillencourt in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Itaba discloses said label is a tack label [Itaba, Col. 6 Lines 32-34]. The label can be tacked onto the mold and the container, when the container is being molded.

Regarding Claim 12, Vaillencourt in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Vaillencourt discloses closed air layers [Vaillencourt, 32a] provided between the plurality of sectioned recesses and the label [Vaillencourt, Fig. 4].

Regarding Claim 14, Vaillencourt in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Vaillencourt discloses the container has a longitudinal axis [Vaillencourt, Fig. 1] and the label is adhered at upper and lower end regions of the label along the longitudinal axis [Vaillencourt, Col. 5 Lines 15-17].

Regarding Claim 15, Vaillencourt in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Vaillencourt discloses the container has a longitudinal axis, and further comprises annular groove

portions [Vaillencourt, 32a] extending about the longitudinal axis on opposite sides of the plurality of sectioned recesses [Vaillencourt, 43b, 44b], the annular groove portions being covered by the label [Vaillencourt, 23, Fig. 1].

5. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaillencourt in view of Itaba as applied to amended claim 1 and claim 15 above, respectively, and further in view of Hoffman (4,976,798).

Vaillencourt in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 and claim 15 above, respectively. The Vaillencourt and Itaba combination does not expressly disclose the features of claims 3 and 16; however, the patent to Hoffman - a method of applying a plastic wrap to a container - discloses a heat-shrinkable label with a heat-sensitive adhesive agent [Hoffman, 40] that is applied to a container [Hoffman, 42, Col. 4 Lines 15-18]. The label is attached to the container. It would have been obvious at the time of the invention to one of ordinary skill, with market forces driving one of ordinary skill to change the prior art, to modify the label in the Vaillencourt and Itaba combination container assembly to be a heat-shrinkable label with a heat-sensitive adhesive, as suggested by Hoffman, in order to apply a label directly to the container [Hoffman, Col. 1 Lines 66-67].

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vaillencourt in view of Itaba as applied to claim 12 above, and further in view of Krishnakumar et al. (5,178,289) [Krishnakumar].

Vaillencourt in view of Itaba discloses all the limitations substantially as claimed, as applied to claim 12 above. The Vaillencourt and Itaba combination does not

expressly disclose the features of claim 13; however, the patent to Krishnakumar – a panel design for a hot-filled container – discloses a recess [Krishnakumar, 260] underneath a label [Krishnakumar, 250], in which the closed air layers form a cushion structure that absorbs impacts from outside for the container [Krishnakumar, Abstract Lines 15-19]. The air pockets help prevent the container from buckling. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the closed air layers between the recesses and the label in the Vaillencourt and Itaba combination container assembly to form a cushion, as suggested by Krishnakumar, in order to prevent barreling of the container [Krishnakumar, Abstract Lines 15-19].

Response to Arguments

7. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection. In response to applicant's argument about the §103(a) rejection of claim 1 as obvious over Takuji (JP 2003-335343) in view of Itaba {Remarks, Page 5 Lines 6-12}, see Paragraph 4 of this office action to see how Vaillencourt in view of Itaba meets the claim limitations as set forth regarding amended claim 1.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: see PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is

(571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
Examiner, Art Unit 3781